

*The Right Honourable Edward Earl of Sandwich,
and the Lady Elizabeth his Wife;
John Lord Viscount Lisburne, and the Lady Mal-
lett his Wife;
The Honourable Francis Greville Esq; and the Lady
Anne his Wife;* } Appellants.

*The Right Honourable Edward Henry Earl of
Litchfield;
The Lord Quarrendon his Eldest Son;
James Lee Esq; and his Lordship's other Younger
Sons;* } Respondents.

The Respondent's CASE.

*Henry Earl of Rochester
died.
Earl Henry died in
1658.*

*Leases determined by
Earl Henry's Death.
The King and Bishops
restored in 1660.*

*Bishop Duppa's Sale to
Countess Anne for 2000 l.*

*The Lives in the Leases
named by Countess Anne.*

E. John lived till 1680.

*Countess Anne enjoyed
the Premises from 1660
till her Death in 1696.
Her Devise to the Re-
spondents.*

*Appellants received
their Legacies under
Countess Anne's Will.*

*Appellants Bill in Hil-
lary Term 1695.*

*Respondents craft Bill.
29 June 1700 both
Causes heard.*

*Respondents Title
affirmed, and Appel-
lants Bill dismissed.*

*Note it cannot be pre-
sum'd that the Countess
could from time to time
have abatement in her
Fines on such Pretences
as these.*

*Note this Jointure on
Countess Anne's Mar-
riage with Earl Henry
was settled on Trustees to
her separate Use.*

HENRY Lord Wilmott, Earl of Rochester, Grandfather to the Ladies who are the Appellants, held the Mannor of *Adderbury, Com. Oxon.* by Leases for Three Lives, from the Bishops of *Winton*, under the Yearly Rents of 85 l. 3 s. 4 d. And his Lordship's be- ing the last Surviving Life in all the Leases upon his Death, which happened in 1658, his Estate and Interest in the Premises, and the Leases thereof, absolutely determin'd.

That for some Years before the Death of Earl Henry, the Premises were enjoy'd by his Creditors for payment of his Lord- ship's Debts, and from his Death (when the Leases and his Estate determined, till King Charles the Second's Restauration,) the Premises were enjoyed by the then Powers, as other Church-Lands were.

Upon the Restauration of King Charles the Second in 1660, when Bishop's Lands were restored to the Churches, Doctor Duppa being made Bishop of *Winton*, had the Premises in his then present Possession, and might have kept them in his own Hands, or granted them to whom he had pleas'd: But upon Application from Anne Countess of Rochester, the Relict of Earl Henry, Bishop Duppa, in consideration of 2000 l. actu- ally paid by her, granted new Leases of the Premises to her, for such Three Lives as she as a Purchaser was pleas'd to name; which were her own Life, and the Lives of John Earl of Rochester, her Son, by the said Earl Henry her second Husband; and of Sir Francis Henry Lee her Son, by Sir Henry Lee her first Husband, the Earl of Litchfield's Grandfather. And as any of these Lives fell, the Countess from time to time, for further Fines paid with her own proper Monies, renewed the Leases, and inserted such other Lives as she thought fit.

The said John Earl of Rochester lived till the Year 1680, (which was about 12 Years after he had attained his full Age,) and then dyed, lea- ving Earl Charles, his only Son, (who is since dead without Issue) and the Appellants, the Ladies his Daughters, having made his Will, and John Cary Esq; and other Executors.

That Countess Anne quietly enjoyed the Premises from 1660, till her Death in 1696. And having by her Bounty to Earl John and his Children, contracted a considerable Debt, she by Deeds executed in 1692, and her Will in 1693, settled the Premises upon Sir Walter St. John, and the said John Cary Esq; and others, upon Trust, first to pay her Debts, and then for the benefit of her Grandson, the Earl of Litchfield, and his Children; and by the same Will, gave several Legacies to the Appellants, the Ladies, and made the Earl of Litchfield and the said Mr. Cary Executors.

Upon the Death of Countess Anne in 1696, the Respondent the Earl of Litchfield, entred and enjoyed the Premises under the said Deeds and Will: And the Appellants received all or most of their Legacies, and gave Discharges for the same, which was at least a tacit Affirmation of the Will, and the Dispositions thereof. Yet soon after, viz.

In Hilary Term 1696, they thought fit to exhibit their Bill in Chancery, to impeach and set aside the said Deeds and Will, on pretence that great part of the Lands claimed by the Respondents under the said Deeds and Will were not Leasehold, but the antient Inheritance of the Wilmott's Family; and though some part of the said Lands were Leasehold, yet that Countess Anne's Purchase thereof in 1660, and all her subsequent Renewals of the Leases, were not for her own Use, but in Trust for Earls John and his said Son Charles, and the now Appellants. And, The Respondents about the same time, exhibited their Bill to be established and quieted in the Possession of the Premises under the said Deeds and Will.

Both Causes were heard before the present Lord Keeper, and on long Debate, a Decree was pronounced in affirmance of the Respondents Right under the said Deeds and Will, as to so much of the said Premises as is Leasehold, and the Appellants Bill for impeaching the same, under pretence of the said supposed Trust was dismissed. But there being some Evidence that a Moiety of a Messuage and some small quan- tities of Land, (and which by reason of a long Unity of Possession could not be well distinguished from the Leasehold,) were the Inheritance of Earl Henry, and would therefore belong to the Appellants as his Heirs at Law. His Lordship directed an Inspection of all the Deeds, and a Tryal at Law to be had to ascertain the same, and to distinguish the Free and Copyhold (if any should appear) from the Leasehold Premises.

The Appellants Pretensions for the said supposed Trust as to the Leasehold, were these;

First, That Earl John had a Tenant's Right to renew the Leases.

Answer, That there is not in such Cases any Right of Renewal at any time, and if there were, yet in this Case it was lost, because it could not continue longer than the Lease; and all the Leases granted to Earl Henry determining with his Life, neither his Son Earl John, or any other Person could claim any Tenant Right to renew from the Bishop.

Secondly, That the Loyalty and Sufferings of the Wilmott Family were considered by Bishop Duppa, and less Fine accepted from the Countess than otherwise would have been.

Answer, That the 2000 l. paid by Countess Anne on her said Purchase in 1660: And the Fines paid on her several Renewals afterwards, were not any thing lessened or abated on account of Earl Henry's Sufferings or Loyalty; the Bishop having also been a great Sufferer himself by the Iniquity of the Times; and if there had been some Abatement, yet that would not have created any such Trust in the Countess, as is pretended to. But it is proved by Sir Walter St. John and Mr. Cary, who Treated for the Countess upon her said Purchase and sub- sequent Renewals, that there was no Abatement made her in respect of the Sufferings of the Wilmott Family, but that the said Sum of 2000 l. was insisted upon and demanded by the Bishop, as an adequate Purchase; and therein the Countess was used only as a Stranger, and the subsequent Fines upon all Renewals were proportionable thereto, without respect to the Sufferings of the Family.

Note, Since the said Purchase, upward of 2000 l. has been laid out by the Countess in Building and other Improvements upon the Premises, where- by the same are now become in another condition than they were at the time of the Countess's Purchase in the Year 1660.

Thirdly, That Countess Anne in her Life-time on several casual Discourses, seemed to own the pretended Trust, and that she by Sale of Wilmott House in Scotland-Yard, and other Estate of Earl Henry, raised Monies to pay for the said Purchase.

Answer 1st, As to the Appellants pretences of the Countess owning a Trust of the Leasehold Premises, the Proof thereof is such as carries no Weight nor Credit with it, in a case of this Nature; and Swift and Gardner, (the one a Carpenter, and the other an ordinary Country Fellow,) who are the two Witnesses, who pretend to prove the same, are Persons of very mean Circumstances and Credit, and so proved to be, and their Testimony contradicted by Sir Walter St. John, and Mr. Cary, and others of known Honour and Integrity.

2dly, Earl Henry left no Estate of his own, except these small Parcels not yet ascertained, but by the Decree directed to be Tried: And it is fully proved, That the said 2000 l. Purchase-Money, and all the Fines paid by the Countess on her Renewals of the Leases, were paid with her own proper Money; and she was so far from raising any Monies out of Earl Henry's Estate, or gaining any Advantages by the Wilmott Family, That having a Jointure of about 1200 l. per Ann. settled on her by the said Sir Henry Lee her first Husband, and other great Acquisitions from his Family, she did thereout supply the said Earl Henry Beyond-Seas, with great Sums for his Support, and also laid out 1500 l. or thereabout of her own Estate, towards Earl John's Maintenance during his Minority, and above 2000 l. for the Appellants, the Ladies Education and Pre- ferment in Marriage.

3dly, It is not proved what became of Wilmott House, much less that Countess Anne had any benefit thereby.

And, 4thly, What Improvements since the said Purchase, have been made of the Yearly value of the Leasehold Premises, are owing to the great Charges of Countess Anne, in Buildings and otherwise.

It is therefore hoped, That after 40 Years Possession, and so many Acts of absolute Ownership, and her Deeds and Will duly and deliberately made and executed, that there can be no reason to set up a pretence of a Paroll Trust to affect an Estate at this distance of time.

Hen. Pooley.